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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,225	03/23/2004	Donald V. Edwards	SIM 04023	8484
7590 03/20/2006 JAMES RAY & ASSOCIATES 2640 PITCAIRN ROAD MONROEVILLE, PA 15146			EXAMINER WATSON, ROBERT C	
			ART UNIT 3723	PAPER NUMBER
DATE MAILED: 03/20/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/807,225		EDWARDS, DONALD V.	
	Examiner		Art Unit	
	Robert C. Watson		3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 13, 17-26, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-12, 14-16 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 9-11, 14, 16, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Younick.

Younick shows an apparatus for applying upward pressure to an object. The apparatus includes a first means 6, an elongated rod 1, a second means 4, and a third means 7. The **third means 7 “engages the support 3”** (Younick, column 2, line 13). This is construed by the examiner as **engaging the support 3 always even during a prying operation**. Clearly, the tool operates by third means 7 supporting and pivoting said apparatus. Even if the third means 7 supported and pivoted the apparatus for a small infinitesimal time it would read on the claim language. Since the third means 7 “engages the support 3” it must necessarily be on an underside of the second means. The bottom of third means 7 is at least coplanar with the underside of the second means 4 which is interpreted as being “on the underside of the second means 4” since this is a broadly written phrase subject to various interpretations. Since the Younick device is a “wrecking bar”, the examiner takes Official Notice that wrecking bars are commonly made from steel and that steel would have the strength characteristics recited in the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Younick in view of Morgen and Christensen et al.

Morgen teaches that various object and user hand engaging portions of the lifting lever may include grips or caps to cover the extremities of these engaging portions. To provide grips or caps on any of the engaging portions of Younick would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Morgenberger.

Christensen et al teaches that the object engaging portions of a lever may be made from rubber or plastics. The examiner takes Official Notice that a common plastic is polyethylene. To make any engaging portion in Younick from polyethylene would have been obvious at the time of the invention in view of the teachings of Christensen et al.

Claims 6-8, 13, 17-26, and 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/21/05.

The Ward and Marson lever lifting tools are cited to show a third means disposed below the bar.

Applicant's remarks have been carefully considered. Applicant's remark that bar 7 of Younick does function to support and pivot the tool is found by the examiner to

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be far fetched. Since the bottom of bar 7 “engages the support 3” (Younick, column 2, line 13), and since this is construed as engaging the support 3 always even during a prying operation then, necessarily, this bar must function to support and pivot the tool during the prying operation. It is noted in applicant’s arguments that applicant urges that the claims are patentable because “the third means 7 of Younick is not disposed below the bar 2”. However, the examiner is unable to find in the claims a recitation that the third means is disposed below the bar. The claim language the examiner finds is that “the third means is disposed on an underside of the second means”. A third means coplanar with the underside of the second means is considered on an underside of the second means.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 571 272-4498. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 571 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rcw



ROBERT C. WATSON
PRIMARY EXAMINER